UNITED NATIONS

AT

Administrative Tribunal

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16 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 749

Case No 834 : DEMERS DEAR

Against : The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, on 4 October and 14 December 1994, Edith Demers Dear, the former spouse of the late Thomas John Dear, a participant in the United Nations Joint Staff Pension Fund, hereinafter referred to as UNJSPF, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 January 1995, the Applicant, after making the necessary corrections, again filed an application, requesting the Tribunal to order the Respondent to pay her:

> "the ... amount calculated according to the scale of the UNJSPF and retroactive to the death of Mr. Dear: April 17, 1993, [as] the widow's benefit normally awarded."

Whereas the Respondent filed his answer on 28 April 1995;

Whereas the Applicant submitted communications on 25 May, 26 August, and 31 October 1995;

Whereas the Respondent submitted a reply to the Applicant's communications on 29 November 1995;

Whereas the facts in the case are as follows:

The Applicant was married in 1960 to Thomas John Dear, who served as a staff member of the International Civil Aviation Organization (ICAO) from 1956 to 1965, and from 1970 to 1971. From 1972 to 1975, when he retired, Mr. Dear served as a staff member of the International Telecommunication Union (ITU). The Applicant and Mr. Dear were divorced in 1982. He subsequently remarried. He died on 17 April 1993.

On 25 October 1993, the Applicant wrote to the Secretary of the UNJSPF, requesting to be the beneficiary of a survivor's benefit derived from her former husband, as his widow could not receive such a benefit because she had married him after his retirement. She, on the other hand, had been married to him for 24 years, throughout his service with ICAO and ITU.

In a reply dated 17 November 1993, the Secretary of the United Nations Joint Staff Pension Board (UNJSPB) informed the Applicant as follows:

> "... We regret to confirm that, notwithstanding the reasons and circumstances described in your letter, you are not entitled to any benefits from the Pension Fund. Under article 34 of the UNJSPF Regulations, a benefit becomes payable to the surviving spouse of a deceased retired Fund participant only if the spouse had been married to the participant when he separated from service and remained married to him until his death. Consequently, your potential survivor's benefit ended when your marriage to the late Mr. Dear was terminated by divorce in 1982.
>
> The Secretary of the Pension Board cannot authorize any disbursements from the Pension Fund that would not be made in strict compliance with the Pension Fund's Regulations and Rules. Furthermore, there is no person or entity that would have the power or discretion to authorize payments from the Pension Fund that would be made in deviation from its applicable Regulations and Rules.

> We understand the arguments advanced in your letter and sympathize with your difficult financial circumstances. To our sincere regret we must nevertheless respond negatively to your letter, as no other answer was possible under the Pension Fund's Regulations and Rules."

After an exchange of correspondence with the Secretary of the UNJSPB, on 7 February 1994, the Applicant confirmed that she wished her claim to be reviewed by the Standing Committee of the UNJSPB (the Standing Committee).

On 28 July 1994, the Standing Committee considered the Applicant's appeal. On 14 September 1994, the Secretary of the UNJSPB informed the Applicant, inter alia, as follows:

> "...
>
> I regret to advise you that, at its ... meeting [held on 28 July 1994], the Standing Committee decided to uphold the decision taken by the Secretary of the Board, on the grounds that you were not entitled to a survivor's benefit under the provisions of article 34 of the Pension Fund's Regulations, as adopted by the United Nations General Assembly."

On 17 January 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant has a right to a survivor's benefit following her former husband's death.

2. Customs have changed since the UNJSPF Rules and Regulations were formulated, and they should be adapted to meet the needs of changing societies.

Whereas the Respondent's principal contentions are:

1. The Applicant does not have standing before the Tribunal. The appeal is therefore not receivable.

2. Article 34 (a) of the UNJSPF's Regulations sets forth two requirements for entitlement to a widow's benefit. The Applicant did not satisfy the second requirement, that she remain married to the participant until his death.

3. Acceptance of the Applicant's plea would require substantive and retroactive amendment of the current Regulations.

The Tribunal, having deliberated from 3 to 16 July 1996, now pronounces the following judgement:

I. In 1960, the Applicant married Thomas John Dear, who had been a staff member of ICAO and ITU. The couple divorced in 1982, six years after Mr. John Dear's retirement. Mr. Dear remarried. He died in 1993.

The Applicant claims that she is entitled to a surviving spouse's benefit from the UNJSPF. In support of her claim, she notes that Mr. Dear's second wife did not receive this benefit, because she was not married to him at the time of his separation from service.

Should her claim be denied, the Applicant requests financial assistance from the UNJSPF in view of the hardship which she is suffering.

The Respondent submits that, as the Applicant does not fit into any of the categories listed in article 2.2 of the Tribunal's Statute, the Applicant has no standing before the Tribunal.

II. To determine whether the Applicant has standing before the Tribunal under article 2.2, the Tribunal must first establish whether she has any rights deriving from her former husband's participation in the UNJSPF.

III. The Respondent contends that the Applicant is not entitled to the benefits which she claims on the basis of article 34 (a) of the Regulations which reads as follows:

> "A widow's benefit shall, subject to article 41 and to (b) below, be payable to the surviving female spouse of a participant who was entitled to a retirement, early retirement, deferred retirement or disability benefit at the date of his death, or who died in service, if she was married to him at the date of his death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death."

In the Tribunal's view, this text is conclusive. The Applicant's claim is without foundation under the UNJSPF's Regulations. The Applicant clearly has no rights relating to the UNJSPF and, therefore, she has no standing before the Tribunal under the provisions of article 2.2 of its Statute.

IV. The Tribunal cannot enter into the question of the fairness or unfairness of the provisions of article 34 (a), nor will it venture an opinion on whether this provision should be altered, as the Applicant requests. The Tribunal merely affirms that article 34 (a) is in force and has been correctly applied by the UNJSPF.

V. In this respect, the Tribunal recalls its Judgement No. 685, Loquinov, paragraph VII, (1994) in which it stated that "while not unaware of or unsympathetic to the problems ... faced by the Applicant ..., [the Tribunal] is unable to find that in this particular case they would legally permit derogation from the application of the Regulations and Administrative Rules of the Fund."

VI. For the foregoing reasons, the Tribunal finds that the application is not receivable.

(Signatures)

Samar SEN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 16 July 1996

R. María VICIEN-MILBURN
Executive Secretary